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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Telecommunications Carriers Use
Of Customer Proprietary Network
Information and Other Customer
Information

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CC Docket 96-115

REPLY COMMENTS OF
THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY

I. INTRODUCTION

Pursuant to a Federal Communications Commission ("Commission") Public Notice dated August 7, 1998, the Southern New England Telephone Company ("Telco") respectfully submits its Reply Comments ("Reply") regarding the petition for waiver of the Customer Proprietary Network Information ("CPNI") rules sought by the Connecticut Department of Public Utility Control ("Department"). The Telco directs this Reply primarily to the Comments submitted by AT&T Corporation ("AT&T").

The Department is seeking a waiver of the CPNI rules, 47 C.F.R. § 64.2007 (f)(2)(iii) and (v), for the limited purpose of facilitating a ballot process that would allow the Telco's retail customers to elect a local service provider from among the certified local exchange carriers ("CLECs") participating in the ballot. In order for a selected CLEC to establish local service with a customer, the Telco will be required to transfer certain CPNI to that CLEC. AT&T maintains

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that a waiver is unnecessary in the circumstances outlined in the Department's petition. The Telco disagrees. Contrary to AT&T's arguments, current Commission CPNI rules require customer notification and affirmative customer approval prior to the transfer of CPNI to a third party.

II. ARGUMENT

In its Second Report and Order¹ in this docket, the Commission stated that in 47 U.S.C. § 222, Congress expressly directs a balance of both competitive and consumer privacy interests with respect to CPNI.² According to the Commission, "Congress' new balance, and privacy concern, are evidenced by the comprehensive statutory design, which expressly recognizes the duty of *all* carriers to protect customer information, and embodies the principle that customers must be able to control information they view as sensitive and personal from use, disclosure, and access by carriers."³ The Commission thus concluded that, for CPNI uses beyond those set forth in 47 U.S.C. §§ 222(c)(1)(A) and (B),⁴ carriers must obtain express written, oral, or electronic approval.⁵

AT&T nonetheless argues that "a waiver is unnecessary for the incumbent local exchange carrier ("ILEC") . . . to transfer CPNI to the follow-on Competitive Local Exchange Carrier

¹ Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-27 (released Feb. 26, 1998) (Second Report and Order).

² *Id.* at ¶ 3.

³ *Id.*

⁴ 47 U.S.C. §§ 222(c)(1)(A) and (B) provide: Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (b) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.

⁵ Second Report and Order at ¶ 87.

(CLEC) a customer has chosen to provide local service "⁶ According to AT&T, current Commission CPNI rules would require the transfer of CPNI where a customer is balloted and selects a particular CLEC as its follow-on carrier. AT&T contends that "[b]y selecting a new carrier, the customer has consented to the transfer of its CPNI or customer service record so that the new carrier may initiate service."⁷ Additionally, AT&T claims that a customer who does not select a follow-on carrier in the ballot process "will have been advised that their failure to make a selection will result in their being assigned to a new local carrier."⁸ AT&T thus concludes that "[b]y failing to respond to the ballot, the customer has impliedly [sic] consented to this agreement."⁹

In setting forth its position, AT&T relies primarily on two Commission determinations contained in the Second Report and Order. First, the Commission determined that an ILEC is not prohibited "from disclosing CPNI to competing carriers. for example, upon customer 'approval.'"¹⁰ Second, the Commission acknowledged, that "although an incumbent carrier is not required to disclose CPNI pursuant to section 222(d)(1) or section 222(c)(2) absent an affirmative written request, local exchange carriers may need to disclose a customer's service record upon the oral approval of the customer to a competing carrier prior to its commencement of service as part of the LEC's obligations under sections 251(c)(3) and (c)(4) "¹¹ Contrary to AT&T's arguments, this language from the Second Report and Order would not permit release of a customer's CPNI by the mere act of a customer choosing a new local service provider via the ballot in the absence of proper notification and authorization; nor would it permit release of a customer's CPNI if the

⁶ AT&T Comments at p. 2.

⁷ *Id.* at p. 4.

⁸ *Id.*

⁹ *Id.*

¹⁰ Second Report and Order at ¶ 84.

customer were allocated to a new provider because that customer had failed to select a carrier via the ballot process.

Taking first the scenario where a customer does select a new carrier by marking and returning his or her ballot, the Telco does not disagree that proper notice could be given on a ballot such that a signed ballot would sufficiently authorize transfer of CPNI. The Department's Petition, however, states that "the notice requirements would be too lengthy making it impossible for the notice to be in compliance with [Commission] rules."¹² The Connecticut Office of Consumer Counsel ("OCC") supported the Department's position by stating that "[i]nclusion of the CPNI information would render the ballot ineffective due to its size and complexity."¹³ MCI Telecommunications Corporation ("MCI") also commented that "[a]bsent a waiver of the CPNI requirement . . . the Department would be forced to include significant notification provisions on the ballot, rendering the ballot cumbersome, complex and customer unfriendly."¹⁴ The Telco and SNET America, Inc. ("SAI") made similar statements.¹⁵ AT&T stands alone with the view that, at most, the CPNI rules would require the Department ballot "to include a statement that the local service provider that you select or is assigned to you will be provided a copy of your customer service record so that it may provide local service to you."¹⁶

In the Second Report and Order, the Commission concluded that telecommunications carriers should be required to notify customers of their right to restrict carrier use of CPNI.¹⁷ Accordingly, the Commission required "carriers to provide notification if they wish to use,

¹¹ *Id.*

¹² Petition at p. 3.

¹³ OCC Comments at p.2.

¹⁴ MCI Comments at p. 3.

¹⁵ Telco Comments at p. 2; SAI Comments at p. 2.

¹⁶ AT&T Comments at p. 3, note 2.

¹⁷ Second Report and Order at ¶ 127.

disclose or permit access to CPNI beyond the purposes specified in sections 222(c)(1)(A) and (B)."¹⁸ The Telco will not repeat here the requirements the Commission has imposed for sufficient customer notification. Those requirements are discussed in paragraphs 135 - 142 of the Second Report and Order. Suffice it to say that the minimum notice required is more comprehensive than AT&T's Comments suggest. Inclusion of proper notice on the ballot would, as numerous other comments argued, render the ballot lengthy, excessively costly and ultimately very complicated from a consumer's point of view. A waiver of the CPNI rules is necessary to address that very real concern.

Turning next to the scenario where a customer fails to select a local service provider via the ballot process and is thus allocated to a carrier, the Telco disagrees with AT&T that "implied consent" will exist to authorize transfer of CPNI. Under the current ballot design, customers will be advised that if they fail to choose a follow-on carrier through the ballot process, they will be assigned to a new local carrier. AT&T contends that a customer who does not elect a CLEC during the ballot process has given his "implied consent" to be randomly allocated to one of the participating CLECs and thus CPNI can be transferred to the new carrier. AT&T's "implied consent" theory closely resembles a "notice and opt-out mechanism" that the Commission clearly disallowed in its Second Report and Order. Specifically, the Commission stated:

Our express approval requirement also is justified by the principles of customer control and convenience that are embodied in section 222. These principles contemplate that the customer, not the carrier, will decide whether and to what extent CPNI is used. Consistent with these principles, we find that express approval, in contrast to a notice and opt-out approach, best ensures that the customer maintain control over carrier use of sensitive CPNI, and that those that wish to limit the use and dissemination of their information will know how, and will be able to do so.¹⁹

¹⁸ *Id.*

¹⁹ *Id.* at ¶ 99. While SNET earlier supported an opt-out provision, believing that it would be consistent with, and would achieve the purposes of, 47 U.S.C. § 222, that is explicitly not what the Commission ordered.

Therefore, contrary to AT&T's arguments, a waiver of the CPNI rules is necessary in order for the Telco to transfer CPNI of an allocated customer to a CLEC.

Finally, the Telco is compelled to address an additional issue raised by AT&T's reliance on the Commission's acknowledgment that "although an incumbent carrier is not required to disclose CPNI pursuant to section 222(d)(1) or section 222(c)(2) absent an affirmative written request, local exchange carriers may need to disclose a customer's service record upon the oral approval of the customer to a competing carrier prior to its commencement of service as part of the LEC's obligations under sections 251(c)(3) and (c)(4)." ²⁰ As described above, AT&T relies on this language to argue that the ballot process can go forward without a waiver. The Telco must make clear that, in the ballot scenario, the number of customers balloted will preclude the Telco from obtaining verbal consent from each and every customer regarding transfer of CPNI. Moreover, as stated in the Department's Petition, the ballot administrator has estimated that as many as 40%, or approximately 560,000 of the customers will fail to respond to the initial ballot and will therefore be allocated to a participating CLEC. ²¹ The ballot process cannot rely on the Telco obtaining oral approval even for the allocated customers. Rather, a waiver of the rules is necessary if the Connecticut ballot is to proceed.

III. CONCLUSION

Contrary to AT&T's arguments, a waiver of the Commission's CPNI rules is necessary if the Connecticut ballot is to go forward. Informed customer consent is required in order for the Telco to release a customer's CPNI to a third party carrier. To provide the required CPNI notice

²⁰ Id.

²¹ Petition at p. 3.

to customers on the ballot would add significantly to the length of the ballot and, in turn, to the cost of the ballot. Moreover, under the current Commission rules, even if the proper notice were included on the ballot document, in the absence of a returned ballot containing a signature authorizing transfer of CPNI, the Telco simply could not disclose the customer's CPNI. Finally, any suggestion that oral approval could somehow be obtained from those customers who fail to sign and return a ballot ignores the reality and magnitude of the ballot process. Therefore, if the Connecticut ballot is to go forward, the Department's request for a waiver of the CPNI rules should be granted for the limited purpose of the ballot and for the limited duration of the ballot process.

Respectfully submitted,

THE SOUTHERN NEW ENGLAND
TELEPHONE COMPANY

By Wendy S. Bluemling/JSP

Wendy S. Bluemling
Director-Regulatory Affairs
310 Orange Street
New Haven, CT 06510
203-771-8514

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